

CHAPTER 3. REVIEW AND INVESTIGATION

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CHAPTER 3. REVIEW AND INVESTIGATION

3.1 OVERVIEW.

- 3.1.1 When potential ADA or administrative violations are discovered, it is necessary to review the situation and document the facts surrounding it to determine if there is cause to request a formal investigation.

3.2 POLICY.

- 3.2.1 When a potential violation of the ADA or administrative policy is detected, it shall be reported to the Center Chief Financial Officer (CFO), if at a Center; the Agency Deputy CFO (DCFO), if at Headquarters; or the Deputy Inspector General (DIG), if in that office. The Center CFO, DCFO, or Deputy IG shall then ensure a preliminary review and, if warranted, a full investigation is conducted, that required reporting requirements are met, and that corrective and follow-up actions are taken as required.

3.3 AUTHORITIES AND REFERENCES.

3.3.1 Legislation and Regulations.

- A. The National Aeronautics and Space Act of 1958, Public Law 85-568 (Title 42, United States Code (U.S.C.), Chapter 26). This law, referred to as The Space Act, established NASA as a Federal agency, outlining the objectives of United States aeronautical and space activities and authorizing NASA to enter into activities which require financial support functions subject to ADA requirements, such as contracting, hiring employees, constructing facilities, and accepting gifts and donations.
- B. Title 31, United States Code (U.S.C.).
1. Section 1301(a). This section requires that appropriations be used for their intended purposes.
 2. Sections 1341(a)(1)(A) and (B), 1342, and 1517(a) (part of the ADA, as amended). These sections prohibit obligations or expenditures in excess of available funds, involving the government in any contract or other obligation in advance of appropriations unless authorized by law, and accepting voluntary services or employing personnel in excess of that authorized by law except under certain specific conditions.
 3. Sections 1349(a), 1350, 1518, and 1519. These sections set forth adverse personnel actions and criminal penalties for violations of the 31 U.S.C. § 1341(a), 1342, and 1517(a).
 4. Sections 1351 and 1517(b). These sections require that any violation of sections 1341(a), 1342, or 1517(a) be reported immediately to the

President and Congress with all relevant facts and a statement of actions taken.

5. Section 1502(a) (the “*bona fide* needs” statute). This section requires that appropriations made for a definite period of time be used only for expenses properly incurred or to complete contracts properly made and obligated during that time.
 6. Section 1514(a). This section requires that the agency prescribe by regulation a system of administrative control, not inconsistent with legal accounting procedures, to restrict obligations and expenditures to the amounts available and enable the head of the agency to fix responsibility for any overobligations and overexpenditures.
 7. Section 3302(b) – Custodians of Money. An official or agent of the U.S. Government receiving money on behalf of the Government shall deposit all funds received in the Treasury without deduction for charge or claim.
- C. OMB Circular No. A-11, Preparation, Submission, and Execution of the Budget, Part 4, “Instructions on Budget Execution.” Part 4 of this Circular provides guidance on budget execution, including fund control (e.g., appropriation, reappropriation, funds distribution, and ADA requirements) and reporting requirements in the event of an ADA violation.

3.3.2 NASA Policy and References.

- A. NASA Policy Directive (NPD) 9050.3F, “Administrative Control of Appropriations and Funds.” This NPD states NASA’s goal to ensure the responsible administration of all funds through the use of Fund control Regulations.
- B. Financial Management Requirements (FMR), Volume 5, *Budget Execution*. This volume provides Agency guidance for controlling and executing funds and relates ADA requirements to the budget execution process.

3.4 ROLES AND RESPONSIBILITIES.

- 3.4.1 Roles and responsibilities for ensuring compliance during budget execution are identified in FMR Volume 5, *Budget Execution*.
- 3.4.2 The roles and responsibilities for reporting, investigating, and monitoring violations are described in Table 3-1 below.

Table 3-1, Investigating, Reporting, and Monitoring Violations

Responsibility	Position
Reports ADA violations to the President, the Congress, and the Comptroller General of the United States.	NASA Administrator

Responsibility	Position
Notifies the Center CFO, if at the Center level; the Agency DCFO, if at the Headquarters level; or the Deputy IG if in that office, of any potential fund control violation, either statutory or administrative, immediately upon discovery.	Any Individual with Knowledge of a Potential Violation
For preliminary reviews:	
Ensures that a preliminary review is conducted in accordance with Section 3.5 of this volume.	Agency DCFO, Center CFO, or Deputy IG
For formal investigations:	
Appoints a qualified individual from an organization external to the office being investigated who has no vested interest in the outcome to serve as Investigating Officer for a potential violation at Headquarters.	Agency DCFO
Appoints a qualified individual from an organization external to the office being investigated who has no vested interest in the outcome to serve as Investigating Officer for a potential violation at a Center and informs the Agency DCFO of the potential violation.	Center CFO
Appoints a qualified individual from an office external to the NASA OIG who has no vested interest in the outcome to serve as Investigating Officer for a potential violation in the OIG.	NASA Deputy Administrator
Obtains and documents all relevant and specific facts of the case, including identification of the person(s) responsible for the violation as supported by the Investigating Report, and presents the report to the official that requested the investigation.	Investigating Officer
Provides Investigating Report on potential violations at a Center to Agency DCFO.	Center CFO
Provides a summary brief and the Investigating Report to the Agency CFO.	Agency DCFO
Prepares letters for substantiated ADA violations from the Administrator: <ul style="list-style-type: none"> - To the Director of OMB, transmitting a letter to the President. - To the Speaker of the House of Representatives and the President of the Senate. - To the Comptroller General of the Government Accountability Office. These letters will provide the report of violation in accordance with <u>OMB Circular No. A-11</u> .	Agency CFO
Recommends appropriate action to be taken.	Agency CFO
Initiates appropriate disciplinary action.	Supervisor of Employee Committing a Violation

3.5 PRELIMINARY REVIEW OF POTENTIAL VIOLATIONS.

- 3.5.1 When a NASA employee has knowledge or evidence that a violation may have occurred, they shall notify the Center CFO, if at the Center level; the Agency DCFO, if at the Headquarters level; or the Deputy IG if in that office

immediately upon discovery. That official shall then appoint an individual to conduct preliminary checks of the applicable business transaction and accounting records to determine whether a potential violation exists.

3.5.2 The preliminary review shall focus on the transactions causing the possible violation and not corrective actions and shall be completed within 30 calendar days of discovery.

3.5.3 Interpretation and Legal Issues. The existence of a violation may depend upon an interpretation of statutory or regulatory constraints imposed by a particular appropriation or account, the proper fiscal year to be charged, or similar issues. In all cases, the reviewer shall obtain the advice of NASA legal counsel during the preliminary review. Inquiries regarding violations taking place at Headquarters should be directed to the Office of the General Counsel, while those occurring at field centers should be directed to the Office of the Chief Counsel at the Center.

3.5.4 Preliminary Review Results. The results of the preliminary review shall be documented in a report which shall include sufficient evidence to support the findings and shall be signed and dated by the individual performing the preliminary review. It shall then be forwarded to the official that requested the report for approval, who will coordinate with Counsel as appropriate.

- A. If it is determined that no violation has occurred, approval of the preliminary review report completes the action required.
- B. If it is determined that there is a potential violation, a formal investigation shall be initiated within 15 business days of the approval of the Preliminary Review Report by the official requesting the preliminary review.

3.6 FORMAL INVESTIGATION.

3.6.1 Purpose. The formal investigation shall determine the relevant facts and circumstances concerning the potential ADA violation. If a violation is substantiated, the investigator is expected to find what requirements were violated, what caused the violation, what corrective actions are appropriate, what lessons can be learned from the violation and garnered from the investigative process, and who, by name, was responsible for the ADA violation. If no violation is substantiated, the investigator is expected to fully explain the facts supporting the conclusion that no violation occurred and what corrections to the system are necessary to avoid initiating future ADA investigations for the same or similar reasons initiating this investigation.

3.6.2 Appointment of an Investigating Officer. An appointed investigating official shall perform a formal investigation, report findings and, if a violation has occurred, recommend actions to prevent future violations of a similar type and correct the specific adverse funding condition that resulted from the violation.

3.6.3 Training for Investigating Officers.

- A. Investigating Officers shall have completed an Appropriations Law course that included the requirements of fund control and the ADA and related law prior to investigating any potential violation.
- B. Investigating Officers shall have knowledge of regulatory requirements and Agency policy related to the subject area being investigated.
- C. Investigating Officers shall have training or otherwise have demonstrated that they are qualified to interview witnesses; gather evidence; document facts, findings, and recommendations; prepare an Investigating Report; meet timeframes established for the completion of an investigation; and recommend corrective actions.

3.6.4 Developing Conclusions. During the investigative process, the Investigating Officer shall use extreme care in obtaining and documenting all relevant and specific facts of the case. The conclusions in the Investigating Officer's Report, including the identification of the individual or individuals responsible for the violation and what each individual did or failed to do that caused the violation, shall be supported by the facts presented in the report.

3.6.5 Corrective Action.

- A. When the causes and the individual or individuals responsible for the violation have been determined, NASA managers, Center CFOs, Deputy CFOs, and other appropriate officials shall determine the corrective actions necessary to ensure a violation of a similar nature will not recur.
- B. Corrective actions shall be included in both the report of violation and the final summary report. In addition, officials of the NASA office under investigation, working with the investigating officer, shall develop a summary of lessons learned from the specific circumstances of the case. This summary shall not serve to condone, retroactively approve, or financially justify, a violation. All violations must be corrected with the proper funding or the necessary approval from the proper approving authority.

3.6.6 Investigation Status and Reports.

- A. During the course of an investigation, reports of progress are required monthly to provide the status to the NASA office under investigation and to the Agency DCFO.
- B. Investigations of potential violations, including submission of the final summary reports, shall be completed within three months of the date of discovery and the report shall be provided as outlined in Table 3-1.

3.7 SUBSTANTIATED VIOLATIONS.

- 3.7.1 When a violation has occurred, it shall be reported in accordance with Table 3-1 and, if an ADA violation, in accordance with OMB Circular No. A-11, Section 145. Appropriate disciplinary action will be taken in accordance with Chapter 1, Section 1.10 of this volume.